Chapter II

WORKMEN'S COMPENSATION

3. Employer's liability for compensation: (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable--

(*a*) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding four days;

(*b*) in respect of any injury, not resulting in death, caused by an accident which is directly attributable to--

(*i*) the workman having been at the time thereof under the influence of drink or drugs; or

(*ii*) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workman; or

(*iii*) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

(*c*) [*Omitted by the Workmen's Compensation (Amdt.) Act, V of 1929*].

(2) If a workman employed in any employment specified in Part A of Schedule II contracts any disease specified therein as an occupational disease peculiar to that employment or if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any employment specified in Part B of Schedule II contracts any disease specified therein as an occupational disease peculiar to

that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the employer proves the contrary, the accident shall be deemed to have arisen out of and in the course of the employment.

Explanation: For the purpose of this sub-section a period of service shall be deemed to be continuous which has not included a period of service under any other employer in the same kind of employment.

(3) The Provincial Government, after giving, by notification in the official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of the employments so added the diseases which within the Province shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and the provisions of sub-section (2) shall thereupon apply within the Province as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(4) Save as provided by sub-sections (2) and (3), no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specified injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person, and no suit for damages shall be maintained by a workman in any Court of Law in respect of any injury--

(*a*) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(*b*) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act

The liability of an employer is confined to payment of compensation to someone who is a 'workman' within the meaning of the Act, and then only in respect of an injury caused by 'accident arising out of and in the course of his employment'. The important words being 'employed', 'workman', 'accident', arising 'out of' and 'in the course of' employment. A workman claiming compensation must prove two things: (*i*) that the accident arose out of his employment, that is to say that his employment was distinctive and the approximate cause of his personal injury, and (*ii*) that it occurred in the course of employment. The words 'in the course of employment' refer to time and the injury must occur during the subsistence of the employment, while the words 'arising out of employment' imply that the injury must have some relation to the injured's employment and must be due to some risk in that employment as distinguished from a risk to which all members of the public are exposed.

An injured workman has two alternate remedies; either he may proceed under the Workmen's Compensation Act in which case any suit for damages will not be maintainable in any Court of law, or he may sue his employer for damages in an ordinary Civil Court in which case he forfeits his rights under the Workmen's Compensation Act. He may choose whichever suits him better. But if proceedings under the Workmen's Compensation Act, he is finally held not to be a 'workman' he can still sue the employer for damages in a Civil Court by making use of the Limitation Act to avoid the difficulty of time-bar if he can show that he was pursuing a supposed remedy in another jurisdiction. In such cases the Civil Court has power to admit the suit for hearing notwithstanding that it was instituted after the expiry of the period of limitation. The word 'accident' in Section 3(1) is used in the popular and ordinary sense and means 'mishap or' untoward extent not expected or designed. Whether the accident 'arises out of employment or not' depends on the facts of each case; the accident must be connected with the employment and must arise out of it. There must be a casual connection or association between the employment and the accidental injury.

Group Insurance: Application for claim was preferred before Authority under Payment of Wages Act and not before Commissioner under Workmen's Compensation Act. *Held*, no doubt Authority under Payment of Wages Act was also Commissioner under Workmen's Compensation Act, yet such Authority had no jurisdiction to award any dues with regard to Group Insurance. **1991 PLC 672.**

Liability of employer for compensation: Lady Sweeper while cleaning Sewerage falling in sewer resulting in abortion and paralysis and then death. Death, in circumstances resulted from accident of falling in sewer and employer could not escape liability to pay compensation. Order of the Commissioner allowing compensation on the basis of medical certificate

showing that abortion took place due to falling was upheld in appeal. **1985 PLC 652.**

If a workman's employment compels him to be at a particular place where an accident happens the accident must be taken to arise out of the employment, although it is not being contributed to in any way by the nature of the employment. The expression "arising out of the employment" applies to the employment as such to its nature, its conditions, its obligations and its incidents. If by reason of any of these the workman is brought within the zone of special danger and so injured or killed, the broad words of the statute "arising out of the employment" apply. The peril of being exposed to a moving engine is not one which would ordinarily involve the public at large. Such kinds of perils are attached to particular locations, *i.e.*, Railway yards where there is frequent shunting of the Railway engines. A gangman while working with his gang in the Railway yards was asked to go to a Railway Hospital for medical examination in order to obtain fitness certificate which was required for his permanent employment. That person while he was on his way to the Hospital and was still within the Railway yards was hit by a moving railway engine. In these circumstances it was *held that* the accident arose from a peril of the place and, therefore, could properly be said to have arisen out and in the course of his employment. **PLD 1967 Kar. 547.**

Deceased employee, while on his way (on cycle) to Mills to join duty, met with accident with bus on public road at a place about five miles from Mills resulting in his death in Hospital. Death of employee, was caused by an accident not "arising out of and in the course of his employment" and hence father of the deceased was not entitled to any compensation under the Act. **1978 PLC 5.**

Person meeting accident while performing duty or while doing an act necessary in performance of duty would be entitled to compensation. Person meeting accident at a time and under circumstances wholly unconnected with his duty would not be entitled to compensation. Whether the person was on an errand of his own or whether he was at a place on account of his duty. Deceased employed as a helper on working of water supply from a well at Railway Station. Death occurred at about midnight due to fall in the well. Contention that according to duty roster deceased went off at 6 p.m. and as such was not on duty at the time of accident. Concurrent findings of the Commissioner and the Labour Appellate Tribunal that there was no electricity at the small Railway Station and water was to be made available even at night and mere fact that deceased was present at night hour would indicate that there was a purpose of his presence at that time challenged before the High Court in Constitution petition. Conclusion that deceased was at Railway Station for the purposes of performing his duties, in circumstances, upheld and Constitution petition dismissed by the High Court. **1984 PLC 178.**

President of Pakistan by Regulation 1 of 1972 applied the Workers' Children (Education) Ordinance, 1972 to the Provincially Administered Tribal Areas when Section 3 of that Ordinance had already stood amended by the Ordinance, L of 1972. Act XXIV of 1973 only re-enacted those amendments which were carried out by the Ordinance, L of 1972 in Principal Law. Since Ordinance was applied to said area in amended form, Section 3 (as amended), therefore, was also applicable to the area and education cess leviable thereunder could competently be recovered by the prescribed Authority from establishment situated in that area. **PLD 1984 Pesh. 215.**

Compensation, award of: Employee during course of his employment received injury and his four fingers of right hand were cut down. Employee who was declared partially disabled was awarded compensation under Act, VIII of 1923 by Commissioner. Award of compensation to employee was challenged by employer on ground that employee was insured under Social Security Ordinance, 1965 and was getting pension thereunder, as such he could not claim any compensation. Two benefits received by employee were quite different in form and nature as pension was to be received by employee from Social Security Institute in monthly payment, whereas amount of compensation for partial disability was to be paid to him by employer himself. Two benefits allowed to workman were not inconsistent or incompatible so as to deprive employee of one by receipt of other. **1992 PLC 348.**

Word "employment" is not synonymous with duty or work: According to case of *Allied International Corporation v. Rashid Bibi*, **PLD 1969 Lah. 710; 1969 PLC 609,** the word "employment" is not to be read as synonymous with duty or work. In other words, the duty or work which the workman is performing at the time of the accident, it falls within the employment and even if it is not directly connected with the object of the accident which though falls within the place, scope and connotation of employment; then the accident would be said to have arisen out of and in the course of employment. It will, however, depend upon the circumstances whether or not the matter is covered by Section 3 of the Act. Ultimately each case is to be decided on its own facts, meaning thereby that the expression used in Section 3, *viz.*, arising out of and in the course of employment, should be interpreted in the light of the facts of each case. Sodium nitrate, a poisonous chemical, resembling white sugar, used in the factory, was lying neither fenced off nor under lock and key, and was easily accessible to workers performing duty around the place. It was eaten by the deceased workmen out of curiosity taking it to be sugar. It was *held that*--

> even though at the particular moment the worker was not performing any duty in respect of that poisonous chemical, yet the accident occurred during employment because if the worker would not have

been in the employment such hazard he would not have encountered. The High Court took note of the fact that this eating might also be impelled by curiosity, impulse of the moment, or just forgetfulness. When illiterate workers are not made to understand the gravity of certain acts, to accept from them the conduct of highly careful, intelligent and enlightened persons is not justified. Thus when the deceased workmen took it as sugar, it was his normal human conduct of a person placed in his position. His position undoubtedly, at that time, was of a worker performing a duty in the employment of the appellant. The fact that at the particular moment he was not performing any duty in respect of the chemical, will not make any difference; so long as it can be safely held that the chemical was near the place of his duty and susceptible to being taken, touched or eaten by him. It is also an admitted fact that such an hazard he would not have encountered, if he would not have been in the employment of the appellant. Human beings, as part of mankind, do not normally come across such situations. This situation was peculiar to the employment of the deceased. Therefore, the accident in this case arose out of and in the course of the workman's employment with the appellant, and thus the latter was liable to pay the compensation.

Compensation for permanent incapacity of employee: Employee who during course of his duties fell down from a height of about 25 feet received injuries on his foot, remained under treatment for about 18 days, firstly was allowed to resume a light duty, but later on was found fit to resume his normal duties, but on the very next day his services were terminated on ground that his services were no longer required. Before termination of his services, employee was examined by a competent Doctor who had already diagnosed 25% permanent incapacity as a result of injuries received by employer. Employee after getting himself examined by competent Doctor, sent a notice to employers offering to get himself examined by Doctor of employer's choice within specified period and in case no reply was received within the said period he would refer matter to Commissioner. No reply having been received by employee from employers within specified period, employee referred matter to Commissioner. Testimony of Doctor who had examined employee was based on clinical examination according to which incapacity suffered by employee was to the extent of 25%. Commissioner found that monthly wages of employee were below Rs. 1,500 P.M. that injury suffered by employee was in course of duty and that employee had suffered permanent incapacity 25% as deposed by Doctor. No fault could be found with conclusion reached by Commissioner, compensation of employee was rightly determined. **1994 PLC 709.**

Registration of agreement: Section 3(5)(*a*), Workmen's Compensation Act, 1923 bars suit by workmen only when workman himself files a claim before Commissioner for the Workmen's Compensation.

Drawing out of sum deposited by employers is different from institution of claim. Such conduct of workmen, *held*, does not bring him within the mischief of clause (*a*) of Section 4(5). 1980 SCMR 485.

Persuation of injured person by employer to accept offer of compensation for injury received is not enough. Employer, after obtaining workman's consent to such agreement is required to send "a memorandum thereof to Commissioner". Commissioner in his turn is bound to intimate such fact to workmen, entertain his representation, if any, and hear him. Commissioner thereafter can register agreement if satisfied as to compensation offered being adequate and not obtained by taking advantage of superior bargaining power. Claim of workman in Civil Courts, barred only when agreement is registered. 1980 SCMR 485.

Expression "specific injury by accident", word "accident" meaning: According to the case of *Mohammad Din Tanner* v. *Rajwali Shah*, **1973 PLC 324,** a person was engaged in a tannery in scraping hides and skins which were previously subjected to chemical processes by immersion in water containing different chemicals. Due to constant contact with these hides and skins he developed skin-itch on his hands and body. The Commissioner for the Workmen's Compensation awarded compensation for the injury suffered. The employers, in appeal against his order, contended that skin-itch could not be treated as injury arising by accident within the meaning of Section 3 of the Workmen's Compensation Act, 1923. It was *held that* :

> Though it is impossible to define with exactitude the meaning of the word "accident" as used in Section 3(4) of the Workmen's Compensation Act but it may be safe to state that accident may either mean some particular occurrence happening at some particular time, or it may even mean the cumulative effect of series of accidents met by an employee in his work. Under the corresponding provisions of the English statute, the view is that contraction of disease due to attack of bacilli would constitute injury by accident. Lord Birkenhead, L.C. in the case of *Brintons Ltd. v. Turvey*, **1905 AC 203,** *held* that where bacillus is not met with, or is very rarely met with except among the implements or the materials of the particular employment, the onus which is imposed on the claimant would be very much lightened. But where the invading bacillus may be found in the train, in the home or in the public house stricter proof should be required that it is a case of an "accident" arising out of and in the course of employment. The workman took employment with his employers in July, 1968, since when he was engaged in scraping hides and skins, which had previously been immersed in water containing different chemicals, including sodium sulphate and lime, and to wash these hides and skins and soften them with his feet and clean them with knife, so as to

remove chemicals therefrom, and again to treat the skins with water containing ammonium sulphate, boric acid and salt. It was sometime in the early part of 1970 that he developed skin disease. Thus, within less than two years, he started to suffer from the consequences of being subjected to contact with noxious bacilli and substances. Such bacilli and substances are generally met with in the employment of the nature in which he was engaged. It cannot be said that such bacilli or noxious substances are generally found everywhere. The medical evidence showed that the workman developed skin disease by reason of contract with germs in the skins and hides and contact with chemical substances used to treat skins and hides. The workman, therefore, did suffer injury by accident arising out of and in the course of his employment within the meaning of sub-section (4) of Section 3 of the Workmen's Compensation Act, 1923.

Expression "arising out of employment": Expression "arising out of employment" applies to employment as such to its nature, its conditions, its obligations and its incident. A workman by reason of same if brought within zone of special danger and so injured or killed the broad words "arising out of the employment" would apply. Workman employed as helper to draw water from a well and in view of nature of his duties used to be present at the well beyond duty hours during night. Deceased dying by an accident as a result of falling into well, in circumstances, was death arising out and in the course of his employment. **1984 PLC 870.**

Liability of employer to pay compensation when accident arising out of and in the course of employment: In the case of *Kamala v. Chairman Madras Port Trust*, **1968 PLC 643,** it was *held that*:

> In construing the words "arising out of and in the course of employment" in Section 3 of the Workmen's Compensation Act, 1923, it is settled that the course of employment is neither limited to the period of actual labour nor is it extended to include all acts necessitated by the workman's employment. Generally, where an employee has fixed hours and place of work, injuries occurring in the premises while he is going to and returning from the work before or after working hours or at lunch time are compensable. If the injury occurs off the premises, it is not compensable subject to several exceptions. The rule excluding off premises injuries during the journey to and from work does not apply if the making of that journey, whether or not separately compensated for, is in itself a substantial part of the service. A compensable injury may arise not only within the time and space limit of employment, but also in the course of an activity related to the employment, *i.e.*, an activity which carries out the employer's purpose or advances his interests directly or indirectly. Under the modern trend of decisions, even if the activity cannot be

said in any sense to advance the employer's interest, it may still be in the course of employment if, in view of the nature of employment, environment, the characteristic of human nature, and the custom and practices of the particular employment, the activity is on inherent part of the conditions of employment. The Act does not expressly state that an employee must, at the time of injury, have been benefiting the employer. Therefore, if the employee can show that the particular activity, beneficial or not, was a part of his employment, either because of its general nature or because of the particular custom and practice in the individual concern, the statute is satisfied. Where it had become the practice among the Dredge Masters of a Port to order the lascars, to bring their (Dredge Masters') food from their houses outside the premises of the Port, and the lascars, on their part had recognised it as part of their duties, at the same time knowing that the said act was unauthorised, in fact, the lascars having no choice except between obedience and immediate or future dismissal, and lascar was killed while on his way to the Port with food for a Dredge Master: *Held*, that the employee met with his death on account of an accident "arising out of and in the course of his employment."

Workman (supervisor) on being relieved from duty was going home but killed by a previously discharged workman allegedly for not having helped in his re-instatement. Death *held*, did not occur "arising out of, or in the course of employment nor could national extension of employer's premises be availed of, in circumstances. Compensation was held to be rightly refused. **PLD 1972 Kar. 438.**

In a case of accident arising out of and in the course of employment, the death of workman occurred five miles away though on his way to Mills. Accident was not covered by Section 3. **PLJ 1977 Tr.C. (Lab.) 172.**

Contention that since the deceased was insured liability for the payment of compensation was transferred to the Insurance Company. Liability of employer as well as Insurance Company, was *held*, to be co-extensive and amount of compensation can be claimed from either of them. Employer, having already deposited amount was entitled to claim the same from the Insurance Company. **1977 PLC 349.**

An injured workman has two alternate remedies: either he may proceed under the Workmen's Compensation Act in which case any suit for damages will not be maintainable in any Court of Law, or he may sue his employer for damages in an ordinary Civil Court in which case he forfeits his rights under the Workmen's Compensation Act. He may choose whichever suits him better. But if proceeding under the Workmen's Compensation Act, he is finally held not to be a 'workman' he can still sue the employer for damages in a Civil Court by making use of the Limitation Act to avoid the

difficulty of time-bar if he can show that he was pursuing a supposed remedy in another jurisdiction. In such cases the Civil Court has power to admit the suit for hearing notwithstanding that it was instituted after the expiry of the period of limitation.

The opinion given to a workman either to claim compensation under this Act or take other proceedings cannot be confined to an option binding only in the case of success. If a workman brings an unsuccessful action for damages against his employer, he would be debarred from claiming compensation under the Act. Conversely, if a workman institutes a claim for compensation under the Act and fails, he is then debarred from commencing an action for damages at common law or under the Employer's Liability Act.

Expenses reasonably incurred by workman for his medical treatment, workman is entitled to recover such expenses in a claim under the Act. **PLD 1971 Quetta 23.**

Commissioner determining the nature and extent of disability but not giving any finding regarding loss of earning capacity, the order of Commissioner, was held, to suffer from serious legal infirmity and cannot be supported. **1977 PLC 361.**

Disability incurred in course of employment: Amount of compensation awarded by Commissioner, Workmen's Compensation to employee, on account of disability suffered by him during course of his service, had been challenged by employer on grounds that it had not been proved that employee had lost his eye-sight on account of some accident occurring during course of his service; that no notice as required by Section 10 of Workmen's Compensation Act, 1923 had been issued by employee to employer and that claim of compensation had not been preferred by employee within three years of incident of alleged injury. Evidence on record had fully proved that employee had sustained the injury on account of fall of a stone on his head during course of his service resulting in bleeding from his eyes and ears which caused impairment of his eye-sight and capability of hearing. So far as delay in reporting matter of accident to employer was concerned, employee could be excused in view of fact that members of poor working class like employee remained usually content with such act and incidents considering same to be part of their life-scheme or destiny as shaped by Allah Almighty. Such people were generally ignorant of law and they also hesitated to incur fury or wrath of those in power. Law had itself provided that Court or Authority concerned had not to be technical in dealing with matters involving interest of poor workers. Even otherwise Section 10 of Workmen's Compensation Act, 1923, did not exclude exceptions to general rule and Commissioner, Workmen's Compensation could entertain claim to compensation, notwithstanding the fact that no notice was given to employer and claim had not been preferred by worker

within time if he was satisfied that employee's failure to do so was owing to a sufficient cause. If employer had himself knowledge of accident, without same being brought to his notice by unfortunate victim/employee, absence of statutory notice or failure on part of worker in filing claim for compensation within statutory period would constitute no bar to entertainment of such a claim. Delay in making claim of compensation ought to be condoned by Commissioner of Workmen's Compensation or by Appellate Court, if circumstances of a particular case furnished a justification, on considerations of equity, justice and fairplay. Compensation claim of worker who had fallen prey to a mishap or misfortune, should not ordinarily be declined. Commissioner, Workmen's Compensation thus had rightly awarded amount of compensation to employee taking a sane and correct view of the matter. **1997 PLC 339.**

Injury resulting in death--Proviso not applicable--Disobedience of rate or order not material when accident arose out of and in the course of employment: The applicability of clause (*b*) of the provision to sub-section (1) of Section 3 is limited to those cases where injury has not resulted in death. Where, however, the injury has resulted in death the question about disobedience or any rule or order is not material, so long as it can be reasonably held, that the accident arose out and in the course of the employment. Similarly, the negligent or rash conduct of the workman also is immaterial. **1968 PLC 609.**

Liability of employer when workman insured at expense of employer: Compensation awarded to widow of the deceased workman dying in accident during the course of and arising out of employment was challenged on the ground that since the deceased was insured the liability for payment of compensation was transferred to the Insurance Company. It was *held that*:--

although the Insurance Company was liable to pay compensation but the liability of the employer was not thereby discharged. The liability of the employer as well as Insurance Company is co-extensive and the amount of compensation can be claimed from either of them. The employer is entitled to claim the amount from the Insurance Company and, if so advised, may institute suitable proceedings, against the Insurance Company as the amount of compensation has already been deposited by the employer. **1975 PLC 727.**